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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,182	09/29/2003	Donald E. Weder	8403.997	1956

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DUNLAP, CODDING & ROGERS P.C.
PO BOX 16370
OKLAHOMA CITY, OK 73113

EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,182

Applicant(s)

WEDER ET AL.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Terminal Disclaimer

The terminal disclaimer filed on 5/27/04 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of US Patent No. 6,672,006 has been reviewed and is accepted.

The terminal disclaimer has been recorded.

Response to Amendment

Amendment of originally presented claims 1-12, and newly added claims 13-22 are acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charrin (FR 2734464) 1996 in view of VISYN (AU 9188308A).

Regarding **claim-1**:

Charrin depicts in Figures 1 and 2 a flower support device (preformed shape-sustaining member), "movable between a collapsed condition and an expanded condition", as cited in the instant claim, (see Charrin; Figures 1 and 2).

Charrin further depicts the device as having open upper and lower ends and a stabilizing member (3,4) for maintaining the support member as cited.

Charrin also depicts in Figures 5 and 6 a sheet of fluid impermeable material (8) disposed and secured (9) about the support member as cited in the instant claim.

Charrin does not depict "at least one crease formed thereon" the support member as cited.

Berger (Derwent Abstract AU 9852048A) teaches a support member (Figure B1) with a bag disposed within for holding flowers or a plant (Figure B2).

Berger is relied upon for the teaching of creases (Figure B1) in the preformed support member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the support member of Charrin as taught by Berger, and cited in the instant claim;

as further such modification is merely an alternate equivalent forming means performing the same intended function of enabling a collapsed or expanded condition of the preformed support member.

Finally, the securing element (9) of Charrin as depicted in Figure-6, is capable of placement such that the upper end of the support member is "substantially uncovered", as cited in the instant claim.

Regarding claim-2:

The discussion above regarding independent claim-1 is relied upon.

The support member of Charrin is depicted in Figure-5 as, "a substantially frusto-conical configuration", as cited in the instant claim.

Regarding repeating claims 3 and 6:

The discussions above regarding claims 2 and 1 are relied upon.

The tab (3) of Charrin as depicted in Figures 1 and 2, is read as an elastic stabilizing member having a first end portion and an opposed second end portion, as cited in the instant claim (as the tab is capable of recovering from deformation to its original shape [a definition of 'elastic']); and Charrin as modified by Berger, provides for the oppositely disposed creases thereon the support member, as cited.

Charrin further depicts in Figure-2 the first and second end portions (of the elastic member [tab]) connected to the peripheral sidewall as cited, with creases as modified by Berger; said end portions capable of being "disposed" substantially adjacent one of the creases, as cited.

As regards the intended use statement ("so that when the elastic member is placed under tension.....") as cited in the instant claim; as set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon (elastic member) does not serve to limit an apparatus claim.

As such, the elastic member (tab) of Charrin when placed under tension as cited, is capable of moving the support member of Charrin to a collapsed condition as cited; furthermore, "the stabilizing member comprises an elastic member" as cited in the instant claim, is an open-ended statement, and as such, with the addition of an additional step to Charrin, such as retensioning the elastic member and reinserting the end portions into the peripheral sidewall and "upon removal of tension on the elastic member" as cited, the preformed support member of Charrin is capable of moving to the expanded condition as cited.

Regarding repeating claims 4, 5 and 7:

The discussions above regarding claims 3, 1 and 6 are relied upon.

Charrin (see translation; page-1, third paragraph) discloses "waterproof sheets" construction (read as; polymeric material) as cited.

Regarding **claim-13**:

The discussion above regarding independent claim-1 is relied upon.

Charrin as modified by Berger, is capable of crease placement as cited in the instant claim.

Regarding **claim-14**:

Charrin depicts in Figure-6 the decorative cover (8) as extending above the open upper end of the support member (1), as cited.

Regarding **claim-15**:

The discussion above regarding independent claim-1 is relied upon.

The Charrin sheet of material (8) as depicted in combination with the securing element (9), is readable as "formed into a bag" as cited; (as a bag is defined as something resembling a bag).

Regarding **independent claim-8**:

The floral holding material of the instant independent claim is encompassed by the decorative assembly cited in the instant independent claim-1; as such, the rejection of the instant independent claim-8 could be included in the rejection of independent claim-1 as discussed above, and therefore need not be repeated herein.

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Regarding repeating **claim-9**:

The discussions above regarding independent claim-8 and repeating dependent claim-2 are relied upon.

Regarding repeating **claim-10**:

The discussions above regarding independent claim-8 and repeating dependent claims 2 and 6 are relied upon.

Regarding **repeating claims 11 and 12**:

The discussions above regarding independent claim-8 and repeating claims 4, 5 and 7 are relied upon.

Regarding repeating **claim-16**:

The discussions above regarding independent claim-8 and repeating claim-13 are relied upon.

Regarding **independent claim-17**:

Independent claim-17 is a rewording of independent claim-1, as such the rejection of independent claim-1 is applicable to the instant independent claim-17.

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Regarding **repeating claim-18**:

The discussions above regarding independent claim-17 and repeating claims 13 and 16 are relied upon.

Regarding **repeating claim-19**:

The discussions above regarding claim-18 and repeating claims 3, 6 and 10 are relied upon.

Regarding **repeating claim-20**:

The discussions above regarding independent claim-17 and repeating claims 4, 5, 7, 11 and 12 are relied upon.

Regarding **repeating claim-21**:

The discussions above regarding independent claim-17 and repeating claim-14 are relied upon.

Regarding **repeating claim-22**:

The discussions above regarding independent claim-17 and repeating claim-15 are relied upon.

Response to Arguments

Applicant's arguments filed 5/27/04 have been fully considered but they are not persuasive.

The Applicant remarks that the original claims 1-12, "contained limitations which were not warranted and removable of which are necessary in order to provide Applicants with the degree of patent protection to which they are entitled"; and that newly added claims 13-22 are also proper in order to afford Applicants with the degree of protection to which Applicants are entitled on the inventive concept of the subject application".

The amendments to the original claims and introduction of newly added claims necessitate the new grounds for rejection, as the claims are broader than originally presented.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dawson '473 teaches a support member for a plant.

Mookherjee '805 teaches a fluid impermeable plant container.

Hobday '358 teaches a support member in combination with a receptacle.

Charrin '908 teaches a decorative floral holding assembly.

Charrin '687A1 teaches a decorative floral holding assembly.

VISYN (AU 9188308A) teaches creases in a floral holder.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

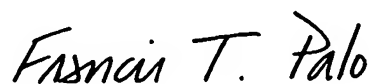
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TERI P. LUU
SUPERVISORY PRIMARY EXAMINER



Francis T. Palo
Examiner
Art Unit 3644